



Missouri Department of Natural Resources
Regulatory Impact Report
In Preparation For Proposing
New Rules 10 CSR 10-6.372 and 10 CSR 10-6.374

Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report...” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

Determination: The Missouri Department of Natural Resources has determined this rulemaking prescribes environmental conditions or standards and verifies that this rulemaking is not a simple unvarying adoption of rules from other federal agencies. Accordingly, the Department has produced this regulatory impact report which will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.

The purpose of these rulemakings is to reallocate the annual and ozone season nitrogen oxides (NO_x) emission allowances established in the U.S. Environmental Protection Agency's (EPA's) Cross-State Air Pollution Rule (CSAPR), starting with allowances distributed for 2017 (76 FR 48208, August 8, 2011, 76 FR 80760, December 27, 2011 and 77 FR 34830, June 12, 2012). CSAPR is an EPA-administered emission cap-and-trade program that enables affected utilities to buy and sell emission allowances from other affected facilities in Missouri or other states. CSAPR is being implemented as a Federal Implementation Plan (FIP), which is a federal regulation effective without action by states, but states have the option to distribute emission allowances differently from the federal scheme by means of a revision to their State Implementation Plan (SIP).

Two (2) small utilities in the state, Chillicothe Municipal Utilities and Higginsville Municipal Power, were not allocated any annual or ozone season NO_x allowances in the FIP. These power plants are stand-alone utilities under a common designated trade representative (DR), and therefore do not have the option of trading allowances freely with other facilities under the same DR. This means that these two (2) power plants may have to purchase allowances on the market in order to operate without penalty. The proposed rulemakings would allocate two annual and one ozone season NO_x allowances to both Chillicothe and Higginsville. In conjunction with the emission allowance reallocations, the method for determining the new unit allowance distribution along with the public notice and data submission timelines have been incorporated into the rulemaking. These rulemakings also incorporate EPA's technical revisions to CSAPR finalized on June 12, 2012 (77 FR 34830).

2. A report on the peer-reviewed scientific data used to commence the rulemaking process.

EPA used peer-reviewed scientific data in preparing CSAPR and a summary of the data was provided with the final rule on August 8, 2011 (76 FR 48208). The Department of Natural Resources has not performed any additional review of scientific data in preparing these new rules.

3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.

These rulemakings will directly impact Chillicothe Municipal Utilities and Higginsville Municipal Power by designating a small number of annual and ozone season NO_x allowances to them for the control periods beginning in 2017. Other existing units in the state that would have received these allowances under the FIP, will no longer have these allowances.

4. A description of the environmental and economic costs and benefits of the proposed rule.

Additional NO_x allowances will provide the affected units at Chillicothe Municipal Utilities and Higginsville Municipal Power operational flexibility. Other existing units will not receive these allowances established in the federal rule.

5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

These rules are not anticipated to have costs that affect this agency or any other state agency to implement and enforce and are not expected to affect state revenue as NO_x allowances are simply being redistributed under the federal emissions trading programs. EPA will be administering and enforcing the trading programs for all states affected by the federal rules.

6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.

These new rules maintain emission requirements prescribed in the federal CSAPR while at the same time redistributing a small amount of annual and ozone season NO_x allowances. Compared to inaction, this rulemaking will benefit two (2) small utilities in the state that received zero (0) allowances by assigning to them a small number, providing operational flexibility. These new rules will also affect the owners of existing units under the CSAPR program as well, as allowances that would have gone to these existing units under the FIP, will go to two (2) small utilities instead.

7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.

The department is not aware of a less costly or less intrusive method for achieving the proposed rule amendments.

8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.

Several alternative approaches to redistribute annual and ozone season NO_x allowances differently than EPA's use of historical emissions were discussed with stakeholders. These alternative methods included using a heat input based method, permit limit caps, and a preferred-unit basis. The heat input based method reallocates allowances using the highest three (3) years of heat input over a five (5) year period. The permit limit cap procedure utilizes permit limits instead of historical emissions for allowance allocation, and the preferred-unit approach applies allowances based on emission rates. However, redistributing allowance was the stakeholder preferred method. This method utilized unused allowances that resulted from federal rounding measures.

9. An analysis of both short-term and long-term consequences of the proposed rule.

The short-term and long-term consequences of this rulemaking are that two (2) small utilities annual and ozone season NO_x allowances will be increased, offering flexibility to operate, while at the same time other existing units in the state will not receive these allowances.

10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.

The purpose of the proposed rulemaking is to reallocate annual and ozone season NO_x emission allowances established in CSAPR per a request of two (2) small utilities which received no allowances. Both annual and ozone season NO_x emissions state-wide will not increase and will remain consistent with the statewide caps, as prescribed under the CSAPR trading programs.

11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information.

Sources of scientific information used in evaluating risk are contained in the supporting documents of the federal CSAPR. These proposed rules are simply redistributing annual and ozone season NO_x allowances associated with the CSAPR NO_x trading programs differently; therefore no additional scientific data was necessary to evaluate risk.

12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.

EPA's analysis in the federal rulemaking and supporting documents address the impacts and uncertainties of the assumptions made in CSAPR. Since these proposed new rules only redistribute NO_x allowances, keeping state budget caps the same as the federal rule, they are not intended to be more lenient or more strict than federal guidelines.

13. A description of any significant countervailing risks that may be caused by the proposed rule.

The department is not aware of any assumptions or uncertainties inherent with the proposed rulemakings.

14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.

Any of the alternative regulatory approaches listed in question 8 above would have produced comparable human health, public welfare or environmental outcomes.

15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State.

Formal comments can be provided on either the Regulatory Impact Report or the draft rule text by sending them to the contact listed in question 16.

16. Provide information on how to request a copy of comments or the web information where the comments will be located.

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or

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Copies of formal comments made on either the Regulatory Impact Report or the draft rule text may be obtained by request from the contact listed above or by accessing the Rules In Development section at web site www.dnr.mo.gov/env/apcp/RulesDev.htm for this particular rulemaking.